



CITY OF GARDNER, MASSACHUSETTS

CHARTER REVIEW COMMITTEE

FINAL RECOMMENDATIONS FOR

A SPECIAL ACT CHARTER

March 2014

Andrew Boucher, Chair
Leonette Roy, Vice-Chair
David Curran
Patricia Jandris
Albert LaFreniere
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Cleo Monette
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1 AN ACT REVISING THE CHARTER FOR THE CITY OF GARDNER.

2

3 Be it enacted by the Senate and House of Representatives in General Court
4 assembled, and by the authority of the same as follows:

5

6 SECTION 1. The following shall be the charter for the city of Gardner.

7

8 ARTICLE 1

9 INCORPORATION; SHORT TITLE; DEFINITIONS

10

11 SECTION 1-1: INCORPORATION

12 The inhabitants of the city of Gardner, within the territorial limits established
13 by law, shall continue to be a municipal corporation, a body corporate and
14 politic, under the name "City of Gardner".

15

16 SECTION 1-2: SHORT TITLE

17 This instrument shall be known and may be cited as the city of Gardner
18 charter.

19

20 SECTION 1-3: DIVISION OF POWERS

21 The administration of the fiscal, prudential and municipal affairs of the city of
22 Gardner shall be vested in an executive branch headed by a mayor and a
23 legislative branch consisting of a city council. The legislative branch shall
24 never exercise any executive power and the executive branch shall never
25 exercise any legislative power.

26

27 SECTION 1-4: POWERS OF THE CITY

28 Subject only to express limitations on the exercise of any power or function
29 by a municipal government in the constitution or General Laws, it is the

1 intention and the purpose of the voters of Gardner, through the adoption of
2 this charter, to secure for themselves and their government all of the powers
3 it is possible to secure as fully and as completely as though each power were
4 specifically and individually enumerated in this charter.

5

6 SECTION 1-5: CONSTRUCTION

7 The powers of the city of Gardner under this charter are to be construed
8 liberally in favor of the city, and the specific mention of any particular power
9 is not intended to limit the general powers of the city as stated in section 1-
10 4.

11

12 SECTION 1-6: INTERGOVERNMENTAL RELATIONS

13 Subject only to express limitations in the constitution or General Laws, the
14 city of Gardner may exercise any of its powers or perform any of its
15 functions and may participate in the financing thereof, jointly or in
16 cooperation, by contract or otherwise, with the commonwealth or any of its
17 agencies or political subdivisions, or with the United States government or
18 any of its agencies.

19

20 SECTION 1-7: DEFINITIONS

21 As used in this charter, the following words shall, unless the context clearly
22 requires otherwise, have the following meanings:

23 (1) "Charter", this charter and any adopted amendments to it.

24 (2) "City", the city of Gardner.

25 (3) "City agency", any multiple member body, any department, division, or
26 office of the city of Gardner.

27 (4) "City office or department head", a person having charge of a city office
28 or department.

- 1 (5) "City website", a site established and maintained by the city as its online
2 repository of municipal information, whether on the Internet or accessed
3 through another comparable technology.
- 4 (6) "Emergency", a sudden, generally unexpected occurrence or set of
5 circumstances demanding immediate action.
- 6 (7) "Full city council", the entire authorized membership of the city council,
7 notwithstanding any vacancy which might exist.
- 8 (8) "Full multiple member body", the entire authorized membership of a
9 multiple member body, notwithstanding any vacancy that exists.
- 10 (9) "Full school committee", the entire authorized membership of the school
11 committee, notwithstanding any vacancy that exists.
- 12 (10) "Initiative measure", a measure proposed by the voters through the
13 initiative process provided under this charter.
- 14 (11) "Local newspaper", a newspaper of general circulation within Gardner,
15 with either a weekly or daily circulation.
- 16 (12) "Majority vote", when used in connection with a meeting of a multiple
17 member body, shall mean a majority of those present and voting, unless
18 another provision is made by ordinance or by such body's own rules;
19 provided, however, that General Laws related to any vote to meet in
20 executive session shall always require a majority of the full multiple member
21 body.
- 22 (13) "Measure", any ordinance, order or other vote or proceeding adopted,
23 or which might be adopted, by the city council or the school committee.
- 24 (14) "Multiple member body", any council, commission, committee,
25 subcommittee or other body consisting of 2 or more persons whether
26 elected, appointed or otherwise constituted, but not including the city
27 council, the school committee or an advisory committee appointed by the
28 mayor.

1 (15) "Organization or reorganization plan", a plan submitted by the mayor to
2 the city council which proposes a change in the organization or the
3 administrative structure of the city organization or a change in the way in
4 which any municipal service is delivered.

5 (16) "Quorum", a majority of all voting members of a multiple member body
6 unless some other number is required by law or by ordinance.

7 (17) "Recall", an election to remove an elected official from office before the
8 expiration of the term for which elected.

9 (18) "Referendum measure", a measure adopted by the city council or the
10 school committee that is protested under the referendum procedures of this
11 charter.

12 (19) "Remove from the city" or "remove from a ward", when a person
13 ceases to be domiciled within the territorial limits of the city or a ward.

14 (20) "Voters", registered voters of the city of Gardner.

15 (21) "Year", a calendar year, unless otherwise specified.

16

17 ARTICLE 2

18 LEGISLATIVE BRANCH

19

20 SECTION 2-1: COMPOSITION; TERM OF OFFICE; ELIGIBILITY

21 (a) Composition - There shall be a city council consisting of 11 members
22 which shall exercise the legislative powers of the city. Six of these members,
23 to be known as councilors-at-large, shall be nominated and elected by and
24 from the voters at large. Five of these members, to be known as ward
25 councilors, shall be nominated from and elected by the voters in each ward;
26 1 such ward councilor to be elected from each of the 5 wards into which the
27 city is divided under section 8-6.

28 (b) Term of Office - The term of office for councilors shall be 2 years each,
29 beginning on the first Monday in the January succeeding the councilor's

1 election, except when that first Monday falls on a legal holiday, in which
2 event the term shall begin on the following day, and until successors have
3 been qualified.

4 (c) Eligibility - Any voter shall be eligible to hold the office of councilor-at-
5 large. A ward councilor shall be a voter in the ward from which election is
6 sought. If a ward councilor or a councilor-at-large removes from the city
7 during the councilor's term, that office shall immediately be deemed vacant
8 and filled in the manner provided in section 2-11. A ward councilor who
9 removes from the ward in which the councilor was elected and who remains
10 a resident of the city may continue to serve during the term for which the
11 councilor was elected. The city council shall determine whether a city
12 councilor has removed from the city.

13

14 SECTION 2-2: PRESIDENT AND VICE-PRESIDENT, ELECTION; TERM;
15 POWERS

16 (a) Election and Term - As soon as practicable after the councilors-elect have
17 been qualified following each regular city election, as provided in section 9-
18 9, the members of the city council shall elect from among its members a
19 president and vice-president who shall serve for 2 year terms. The method
20 of election of the president and vice-president shall be prescribed within the
21 rules of the city council. The rules of the city council in effect at the time of
22 the regular municipal election shall govern the election of the president and
23 vice-president.

24 (b) Powers and Duties - The president shall prepare the agenda for city
25 council meetings. The president shall preside at all meetings of the city
26 council, regulate its proceedings and decide all questions of order. The
27 president shall appoint all members of committees of the city council,
28 whether special or standing. The president shall have the same powers to
29 vote upon measures coming before the city council as any other member of

1 the city council. The president shall perform any other duties consistent with
2 the office that are established by charter, ordinance or other vote of the city
3 council. The vice-president shall preside in the absence of the president.

4
5 SECTION 2-3: PROHIBITIONS

6 (a) Holding Other City Position – Except as otherwise provide by the charter,
7 no member of the city council shall hold any other compensated city office or
8 position, whether elected or appointed. No former member of the city council
9 shall hold any compensated appointed city position until 1 year following the
10 date on which the former member's service on the city council has
11 terminated. This section shall not prevent a city employee who vacated a
12 position in order to serve as a member of the city council from returning to
13 the same position upon the expiration of the term for which that person was
14 elected.

15 (b) Interference with Administration - No city council or any member of the
16 city council shall give orders or directions to any employee of the city who is
17 not appointed by the city council, either publicly or privately.

18
19 SECTION 2-4: COMPENSATION

20 The members of the city council shall receive compensation for their services
21 as set by ordinance. No ordinance increasing or reducing the compensation
22 of the members of the city council shall be effective unless it is adopted by a
23 2/3 vote of the full city council. No ordinance increasing or reducing the
24 compensation of the members of the city council shall be effective unless it
25 is adopted during the first 18 months of the term for which the city council is
26 elected and it provides that the compensation increase or reduction is to
27 take effect upon the organization of the city government following the next
28 regular city election.

1 SECTION 2-5: GENERAL POWERS

2 Except as otherwise provided by the General Laws or by this charter, all
3 powers of the city shall be vested in the city council which shall provide for
4 the performance of all duties and obligations imposed upon the city by law.

5

6 SECTION 2-6: EXERCISE OF POWERS; QUORUM; RULES

7 (a) Exercise of Powers - Except as otherwise provided by General Laws or by
8 this charter, the legislative powers of the city council may be exercised in a
9 manner determined by the city council.

10 (b) Quorum - The presence of 6 members shall constitute a quorum for the
11 transaction of business.

12 (c) Rules of Procedure - The city council shall adopt rules regulating the
13 procedures of the city council, which shall include, but not be limited to, the
14 following rules:

15 (i) regular meetings of the city council shall be held at a time and place fixed
16 by ordinance;

17 (ii) special meetings of the city council shall be held at the call of the
18 president or at the call of any 3 or more members, for any purpose;
19 provided, however, that notice of the meeting shall, except in an emergency,
20 which shall be designated by the president, be delivered to each member at
21 least 48 weekday hours in advance of the time set and shall specify the
22 date, time and location of the meeting and the purposes for which the
23 meeting is to be held; provided further, that a copy of each notice shall
24 immediately be posted as the General Laws relative to such postings
25 require;

26 (iii) all sessions of the city council and of every committee or subcommittee
27 of the council shall, at all times, be open to the public, unless otherwise
28 specified by law; and

1 (iv) a full, accurate, up-to-date account of the proceedings of the city council
2 shall be maintained by the city clerk, which shall include a record of each
3 vote taken and which shall be made available with reasonable promptness
4 following each meeting, but not later than the next regularly scheduled
5 meeting; provided, however, that unless otherwise provided by law, the
6 minutes of an executive session shall be made available as soon as
7 publication of the minutes would not defeat the purpose of the executive
8 session.

9

10 SECTION 2-7: ACCESS TO INFORMATION

11 (a) In General - The city council may make investigations into the affairs of
12 the city and into the conduct and performance of any city agency.

13 (b) Information Requests - The city council may require one or more
14 members of a multiple-member body or city employee(s) to appear before
15 the city council to give any information that the city council may require in
16 relation to the municipal services, functions and powers or duties which are
17 within the scope of responsibility of that person(s) and not within the
18 jurisdiction of the school committee. The city council shall give a minimum
19 of 7 days notice to any such persons it may require to appear before it under
20 this section. The notice shall include specific questions on which the city
21 council seeks information and no person called to appear before the city
22 council under this section shall be required to respond to any question not
23 relevant or related to those questions presented in advance and in writing.

24 (c) Mayor - The city council may request specific information from the mayor
25 on any municipal matter and may request that the mayor be present to
26 answer written questions relating to that information at a meeting to be held
27 not earlier than 7 days from the date the mayor receives the questions. The
28 mayor shall personally, or through a designee, attend such meeting and

1 respond to the questions. The mayor, or the person designated to attend,
2 shall not be required to answer questions relating to any other matter.

3

4 SECTION 2-8: APPOINTMENTS OF THE CITY COUNCIL

5 The council shall, by a majority vote, elect a city clerk to hold office for 3
6 years and until said city clerk's successor is qualified. The city clerk shall
7 have such powers and perform such duties as the council may prescribe, in
8 addition to such duties as may be prescribed by law. Subject to
9 appropriation, the city council may employ staff as it deems necessary.

10

11 SECTION 2-9: ORDINANCES AND OTHER MEASURES

12 (a) Measures- Except as otherwise provided by the charter, every adopted
13 measure shall become effective at the expiration of 10 days after adoption
14 or upon the signature of the mayor, whichever occurs first. No ordinance
15 shall be amended or repealed except by another ordinance adopted in
16 accordance with the charter, or as provided in the initiative and referendum
17 procedures under article 8 of this charter.

18 (b) Emergency Measures- An emergency measure shall be introduced in the
19 form and manner prescribed for measures generally, except that it shall be
20 plainly designated as an emergency measure and shall contain statements
21 after the enacting clause declaring that an emergency exists and describing
22 the scope and nature of the emergency in clear and specific terms. A
23 preamble which declares and defines the emergency shall be separately
24 voted on and shall require the affirmative vote of 2/3 of the full city council.
25 An emergency measure may be passed with an amendment or rejected at
26 the meeting at which it is introduced. No measure making a grant, renewal
27 or extension, whatever its kind or nature, or a franchise or special privilege
28 shall be passed as an emergency measure. Except as provided by the
29 General Laws, such grant, renewal or extension shall be made by ordinance.

1 An emergency measure shall become effective upon adoption or at such
2 later time as it may specify.

3 (c) Charter Objection- On the first occasion that the question on adoption of
4 a measure is put to the city council, if a single member present objects to
5 the taking of the vote, the vote shall be postponed until the next meeting of
6 the city council, whether regular or special. If 3 members present object,
7 such postponement shall be until the next regular meeting. If it is an
8 emergency measure at least 5 members must object. This procedure shall
9 not be used more than once for any specific matter notwithstanding an
10 amendment to the original matter. A charter objection shall have privilege
11 over all motions but must be raised prior to or at the call for a vote by the
12 presiding officer and all debate shall cease.

13

14 SECTION 2-10: CITY COUNCIL CONFIRMATION OF CERTAIN APPOINTMENTS

15 The mayor shall refer to the city council and simultaneously file with the city
16 clerk, the name of each person the mayor desires to appoint as a
17 department head or as a member of a multiple-member body. Appointments
18 made by the mayor shall become effective on the forty-fifth day after the
19 date on which notice of the proposed appointment was filed with the city
20 clerk unless approved or rejected by the city council within the 45 days.

21

22 SECTION 2-11: FILLING OF VACANCIES

23 Whenever a vacancy occurs on the city council, the president of the city
24 council shall, within 30 days following the date of the vacancy, call a special
25 meeting of the city council to fill the vacancy. The city council shall choose a
26 person to fill the vacancy from among the voters entitled to vote for the
27 office. Persons elected to fill a vacancy by the city council shall serve only
28 until the next regular city election, when the office shall be filled by the
29 voters. The candidate elected to an office filled by appointment prior to the

1 election shall be sworn to the office immediately to complete the then
2 unexpired term in addition to the term for which elected. No vacancy shall
3 be filled under this section if a regular city election is to be held within 120
4 days following the date the vacancy is declared to exist. Persons serving as
5 city councilors under this section shall not be entitled to have the words
6 "candidate for reelection" printed with that person's name on the election
7 ballot.

8

9 ARTICLE 3

10 EXECUTIVE BRANCH

11

12 SECTION 3-1: MAYOR: QUALIFICATIONS; TERM OF OFFICE; 13 COMPENSATION; PROHIBITIONS

14 (a) Mayor Qualifications – The chief executive officer of the city shall be a
15 mayor, elected by the voters of the city at large. Any voter shall be eligible
16 to hold the office of mayor. The mayor shall devote full-time to the office
17 and shall not hold any other public office.

18 (b) Term of Office – The term of office of the mayor shall be 4 years,
19 beginning on the first Monday in the January succeeding the mayor's
20 election, except when that first Monday falls on a legal holiday, in which
21 event the term shall begin on the following day, and shall continue until a
22 successor has been qualified.

23 (c) Compensation – The city council shall, by ordinance, establish the
24 compensation for the mayor. No ordinance increasing or reducing the
25 compensation of the mayor shall be effective unless it has been adopted by
26 a 2/3 vote of the full city council. No ordinance increasing or reducing the
27 compensation of the mayor shall be effective unless it has been adopted
28 during the first 18 months of the term for which the mayor is elected and
29 unless it provides that the compensation increase or reduction is to take

1 effect upon the organization of the city government following the next
2 regular city election.

3 (d) Prohibitions – The mayor shall hold no other city position. No former
4 mayor shall hold a compensated appointed city office or city employment
5 until 1 year following the date on which the former mayor’s city service has
6 terminated. This subsection shall not prevent a city officer or other city
7 employee who has vacated a position in order to serve as mayor from
8 returning to the same office or other position of city employment held at the
9 time such position was vacated; provided, however, that no such person
10 shall be eligible for any other municipal position until at least 1 year
11 following the termination of service as mayor. This prohibition shall not apply
12 to persons covered by a leave of absence under section 37 of chapter 31 of
13 the General Laws.

14

15 SECTION 3-2: EXECUTIVE POWERS; ENFORCEMENT OF ORDINANCES

16 The executive powers of the city shall be vested solely in the mayor and may
17 be exercised by the mayor either personally or through the several city
18 agencies under the general supervision and control of the office of the
19 mayor. The mayor shall cause the charter, laws, ordinances and other orders
20 of the city government to be enforced and shall cause a record of all official
21 acts of the executive branch of the city government to be kept. The mayor
22 shall exercise general supervision and direction over all city agencies, unless
23 otherwise provided by law or by this charter. Each city agency shall furnish
24 to the mayor, upon request, any information or materials the mayor may
25 request and as the needs of the office of mayor and the interest of the city
26 may require. The mayor shall supervise, direct and be responsible for the
27 efficient administration of all city activities and functions placed under the
28 control of the mayor by law or by this charter. The mayor shall be
29 responsible for the efficient and effective coordination of the activities of all

1 agencies of the city and may call together for consultation, conference and
2 discussion, at reasonable times, all persons serving the city, whether elected
3 directly by the voters, chosen by persons elected directly by the voters or
4 otherwise. The mayor shall be, by virtue of the office, a member of every
5 appointed multiple-member body of the city. The mayor may, as such ex
6 officio member, attend a meeting of an appointed multiple-member body of
7 the city, at any time, including, so called executive sessions, to participate in
8 the discussions of that body, but shall not have the right to vote.

9

10 SECTION 3-3: APPOINTMENTS BY THE MAYOR

11 The mayor shall appoint, subject to confirmation by the city council under
12 section 2-10, all department heads and the members of multiple-member
13 bodies for whom no other method of appointment or selection is provided by
14 the charter; provided, however, that this shall not include persons serving
15 under the school committee and persons serving under the city council. All
16 appointments to multiple-member bodies shall be for terms established
17 under article 5. Upon the expiration of the term of any member of a
18 multiple-member body, a successor shall be appointed under article 5. The
19 mayor shall fill a vacancy for the remainder of the unexpired term of any
20 member of a multiple-member body. The method of appointment for all
21 other city employees shall be prescribed by administrative order under
22 article 5.

23

24 SECTION 3-4: TEMPORARY APPOINTMENTS TO CITY OFFICES

25 Whenever a vacancy, either temporary or permanent, occurs in a city office
26 and the needs of the city require that such office be filled, the mayor may
27 designate a person to perform the duties of the office on a temporary basis
28 until the position can be filled as provided by law or by this charter. When

1 the mayor designates a person under this section, the mayor shall file a
2 certificate with the city clerk in substantially the following form:
3 I designate (name of person) to perform the duties of the office of
4 (designate office in which vacancy exists) on a temporary basis until the
5 office can be filled by (here set out the regular procedure for filling the
6 vacancy, or when the regular officer shall return). I certify that this person is
7 qualified to perform the duties which will be required and that I make this
8 designation solely in the interests of the city of Gardner.

9 Persons serving as temporary officers under this section shall have only
10 those powers of the office indispensable and essential to the performance of
11 the duties of the office during the period of temporary appointment and no
12 others. Notwithstanding any general or special law to the contrary, no
13 temporary appointment shall be for more than 90 days; provided, however,
14 that not more than 2 extensions of a temporary appointment, which shall
15 not exceed a total of 60 days, may be made when a permanent vacancy
16 exists in the office.

17

18 SECTION 3-5: COMMUNICATIONS; SPECIAL MEETINGS

19 (a) Communications to the City Council - The mayor shall, by written
20 communications, recommend to the city council for its consideration
21 measures as, in the judgment of the mayor, the needs of the city require.

22 The mayor shall, by written communication, keep the city council fully
23 informed of the financial and administrative condition of the city and shall
24 specifically indicate in any such reports any fiscal, financial or administrative
25 issues facing the city.

26 (b) Special Meetings of the City Council - The mayor may call a special
27 meeting of the city council for any purpose. Notice of the meeting shall,
28 except in an emergency, which shall be designated by the mayor, be
29 delivered at least 48 weekday hours in advance of the time set and shall

1 specify the date, time and location of the meeting and the purpose for which
2 the meeting is to be held. A copy of the notice shall be posted immediately
3 or as required by the General Laws relative to such a posting.

4

5 SECTION 3-6: APPROVAL OF MAYOR, VETO

6 Every order, ordinance, resolution or vote adopted or passed by the city
7 council relative to the affairs of the city, except memorial resolutions, the
8 selection of city officers by the city council and any matters relating to the
9 internal affairs of the city council, shall be presented to the mayor for
10 approval within 3 business days of such adoption or passage. If the mayor
11 approves of the measure, the mayor shall sign it; if the mayor disapproves
12 of the measure, the mayor shall return the measure with the specific reason
13 for such disapproval attached to the measure in writing to the city council.
14 The city council shall enter the objections of the mayor on its records and
15 not less than 10 business days nor more than 30 days from the date of its
16 return to the city council, shall again consider the same measure. If the city
17 council, notwithstanding such disapproval by the mayor, shall again pass the
18 order, ordinance, resolution or vote by a 2/3 vote of the full council, it shall
19 then be deemed in force, notwithstanding the failure of the mayor to
20 approve the same. If the mayor has neither signed a measure nor returned
21 it to the city council within 10 days following the date it was presented to the
22 mayor, the measure shall be deemed approved and in force.

23

24 SECTION 3-7: TEMPORARY ABSENCE OF THE MAYOR

25 (a) Acting Mayor – Whenever, by reason of sickness or other cause, the
26 mayor is unable to perform the duties of the office, the president of the city
27 council shall be the acting mayor. The city council, by the affirmative vote of
28 8 members, shall determine whether the mayor is unable to perform the

1 duties of the office. Notwithstanding any general or special law to the
2 contrary, the vote shall be taken in public session by a roll call vote.

3 (b) Powers of Acting Mayor – The acting mayor shall have only those powers
4 of the mayor as are indispensable and essential to conduct the business of
5 the city in an orderly and efficient manner and on which action may not be
6 delayed. The acting mayor shall have no authority to make a permanent
7 appointment or removal from city service unless the disability or absence of
8 the mayor shall extend beyond 60 days nor shall an acting mayor approve or
9 disapprove of any measure adopted by the city council unless the time
10 within which the mayor must act would expire before the return of the
11 mayor. The city council president serving as acting mayor shall not vote as a
12 member of the city council.

13 (c) In the event that the city council president is unable to serve as acting
14 mayor under this section, the city council shall elect, from among its
15 membership, a city councilor to serve as acting mayor.

16
17 SECTION 3-8: DELEGATION OF AUTHORITY BY MAYOR

18 The mayor may authorize a subordinate officer or employee of the city to
19 exercise a power or perform a function or a duty which is assigned by this
20 charter, or otherwise, to the mayor and the mayor may rescind or revoke an
21 authorization previously made; provided, however, that all acts performed
22 under any such delegation of authority during the period of authorization
23 shall be and remain the acts of the mayor. Nothing in this section shall be
24 construed to authorize a mayor to delegate the powers and duties of a
25 school committee member, the power of appointment to city office or
26 employment or to sign or return measures approved by the city council.

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29

1 SECTION 3-9: VACANCY IN OFFICE OF MAYOR

2 Whenever a vacancy occurs in the office of mayor by death, removal,
3 resignation or any other reason during the first through the 41st month of
4 the term for which the mayor was elected, the city council shall call a special
5 election to be held within 90 days following the date the vacancy is created
6 to fill the vacancy for the remainder of the unexpired term. The city council
7 president shall serve as acting mayor until the vacancy is filled. If a regular
8 city election is to be held within 150 days after the date the vacancy is
9 created, a special election need not be held and the position shall be filled by
10 vote at the regular city election and the person elected shall serve for the
11 remainder of the unexpired term.

12 If a vacancy occurs during the 42nd month through the end of the term for
13 which the mayor was elected, the president of the city council shall become
14 acting mayor, shall exercise all the rights and powers of the mayor and shall
15 be sworn to the faithful discharge of the mayoral duties. In the event that
16 the city council president is unable or unwilling to serve, a special meeting of
17 the city council shall be called by the president and the council shall elect, by
18 majority vote, 1 of its members to serve as acting mayor for the remainder
19 of the unexpired term. The individual serving as acting mayor under this
20 section shall not be entitled to have the words "candidate for reelection"
21 printed with that person's name on the election ballot. Any person serving as
22 mayor under this section shall receive the compensation then in effect for
23 the position of mayor.

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1 ARTICLE 4

2 SCHOOL COMMITTEE

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4 SECTION 4-1: COMPOSITION; TERM OF OFFICE; ELIGIBILITY

5 (a) Composition – There shall be a school committee which shall consist of 7
6 members. Six of these members shall be nominated and elected by the
7 voters of the city at large. The mayor shall serve, by virtue of the office, as
8 the chair of the school committee with all of the same powers and duties as
9 the members elected by the voters as school committee members.

10 (b) Term of Office – The term of office for elected school committee
11 members shall be 4 years each so arranged that 3 members shall be elected
12 at each regular city election. Said terms shall begin on the first Monday in
13 the January succeeding the elected school committee member’s election,
14 except when that first Monday falls on a legal holiday, in which event the
15 term shall begin on the following day, and until successors have been
16 qualified.

17 (c) Eligibility – A school committee member shall, at the time of election, be
18 a voter. If a school committee member removes from the city during the
19 term for which that person was elected, that office shall immediately be
20 deemed vacant and filled in the manner provided in section 4-6.

21

22 SECTION 4-2: SCHOOL COMMITTEE CHAIR, VICE CHAIR, SECRETARY

23 (a) Vice-Chair and Secretary Election and Term - As soon as practicable after
24 school committee members-elect have been qualified following each regular
25 city election, as provided in section 9-9, the members of the school
26 committee shall elect from among its members a vice-chair and a secretary
27 who shall serve for a 2-year term.

28 (b) Chair, Vice-Chair and Secretary Powers and Duties - The chair shall
29 prepare the agenda for school committee meetings. The chair shall preside

1 at all meetings of the school committee, regulate its proceedings and decide
2 all questions of order. The chair shall appoint all members of committees of
3 the school committee, whether special or standing. The chair shall have the
4 same powers to vote upon measures coming before the school committee as
5 any other member of the school committee. The chair shall perform any
6 other duties consistent with the office that are established by charter,
7 ordinance or other vote of the school committee. The vice-chair shall preside
8 in the absence of the chair. The secretary shall cause the records of the
9 school committee to be kept in accordance with the law.

10

11 SECTION 4-3: PROHIBITIONS

12 No member of the school committee shall hold any other city position. No
13 former member of the school committee shall hold any compensated
14 appointed city office or city employment until 1 year following the date on
15 which that member's service on the school committee terminated. This
16 section shall not prevent a city officer or other city employee who has
17 vacated a position in order to serve as a member of the school committee
18 from returning to the same office or other position of city employment held
19 at the time the position was vacated; provided, however, that no such
20 person shall be eligible for any other municipal position until at least 1 year
21 following the termination of service as a member of the school committee.

22

23 SECTION 4-4: COMPENSATION

24 The city council may, by ordinance, establish the compensation for the
25 elected members of the school committee. No ordinance increasing or
26 reducing the compensation of elected members of the school committee
27 shall be effective unless it has been adopted by a 2/3 vote of the full city
28 council. No ordinance increasing or reducing the compensation of the elected
29 members of the school committee shall be effective unless it has been

1 adopted during the first 18 months of the term for which elected school
2 committee members are elected and unless it provides that the
3 compensation increase or reduction is to take effect upon the organization of
4 the city government following the next regular city election.

5

6 SECTION 4-5: SCHOOL COMMITTEE POWERS AND DUTIES

7 The school committee shall have all powers which are conferred on school
8 committees by the General Laws and the additional powers and duties
9 provided by charter, ordinance or otherwise and not inconsistent with the
10 General Laws. The powers and duties of the school committee shall include:
11 (i) selecting and removing a superintendent of the schools who shall be
12 charged with the administration of the school system, subject only to policy
13 guidelines and directives adopted by the school committee and, upon the
14 recommendation of the superintendent, to establish and appoint assistant or
15 associate superintendents as authorized by the General Laws;
16 (ii) making all reasonable rules and regulations for the management of the
17 public school system and for conducting the business of the school
18 committee as deemed necessary or desirable; and
19 (iii) adopting and overseeing the administration of an annual operating
20 budget for the school department, subject to appropriation by the city
21 council; provided, however, that the school committee shall have general
22 charge and superintendence of all school buildings and grounds and shall
23 furnish all school buildings with proper fixtures, furniture and equipment;
24 provided further, that the school committee shall provide ordinary
25 maintenance of all school buildings and grounds, unless a central municipal
26 maintenance department, which may include maintenance of school
27 buildings and grounds, is established; provided further, that whenever the
28 school committee shall determine that additional classrooms are necessary
29 to meet the educational needs of the community, at least 1 member of the

1 school committee, or a designee of the school committee, shall serve on the
2 agency, board or committee for the planning or construction of the new,
3 remodeled or renovated school building.

4

5 SECTION 4-6: FILLING OF VACANCIES

6 Whenever an elected member vacancy occurs on the school committee, the
7 president of the city council shall, within 30 days following the date of the
8 vacancy, call a joint meeting of the city council and the school committee to
9 fill the vacancy. The city council and school committee shall choose a person
10 to fill the vacancy from among the voters entitled to vote for the office.
11 Persons elected to fill a vacancy by the city council and school committee
12 shall serve only until the next regular city election, when the office shall be
13 filled by the voters. The candidate elected to an office filled by appointment
14 prior to the election shall be sworn to the office immediately to complete the
15 then unexpired term in addition to the term for which elected. No vacancy
16 shall be filled under this section if a regular city election is to be held within
17 120 days following the date the vacancy is declared to exist. Persons serving
18 as school committee members under this section shall not be entitled to
19 have the words "candidate for reelection" printed with that person's name on
20 the election ballot.

21

22 ARTICLE 5

23 ADMINISTRATIVE ORGANIZATION

24

25 SECTION 5-1: ORGANIZATION OF CITY AGENCIES

26 The organization of the city into agencies to provide services and administer
27 the government may be accomplished only through an administrative order
28 submitted to the city council by the mayor. No administrative order may
29 originate with the city council. The mayor may, subject only to express

1 prohibitions of a general law or this charter, submit proposals to reorganize,
2 consolidate or abolish any agency, in whole or in part, or to establish a new
3 agency as is deemed necessary, establish terms of office and prescribe the
4 functions and administrative procedures to be followed by all such agencies.
5 No function assigned by this charter to a particular agency may be
6 discontinued or assigned to any other agency unless specified by this
7 charter. The mayor may prepare and submit to the city council,
8 administrative orders that establish agencies for the orderly, efficient or
9 convenient conduct of the business of the city. These administrative orders
10 shall be accompanied by a message from the mayor which explains the
11 expected benefits and advises the city council if an administrative order shall
12 require amendments, insertions, revisions, repeal or otherwise of existing
13 ordinances. Whenever the mayor proposes an administrative order, the city
14 council shall hold 1 or more public hearings on the proposal giving notice by
15 publication in a local newspaper, which notice shall describe the scope of the
16 proposal and the time and place at which the public hearing will be held, not
17 less than 7 nor more than 14 days following the publication. An organization
18 or reorganization plan shall become effective at the expiration of 60 days
19 following the date the proposal is submitted to the city council unless the
20 city council shall, by a majority vote, within that 60 day period, vote to
21 disapprove the plan. The city council may vote only to approve or to
22 disapprove the plan and may not vote to amend or to alter it.

23

24 SECTION 5-2: MERIT PRINCIPLES

25 All appointments and promotions of city officers and employees shall be
26 made on the basis of merit and fitness demonstrated by examination, past
27 performance or by other evidence of competence and suitability. Each
28 person appointed to fill an office or position shall be a person especially

1 fitted by education, training and previous work experience to perform the
2 duties of the office or position.

3

4 ARTICLE 6

5 FINANCE AND FISCAL PROCEDURES

6

7 SECTION 6-1: FISCAL YEAR

8 The fiscal year of the city shall begin on July 1 and shall end on June 30,
9 unless another period is required by the General Laws.

10

11 SECTION 6-2: ANNUAL BUDGET MEETING

12 At least 60 days before the beginning of the fiscal year, the mayor shall call
13 a joint meeting of the city council and school committee, including the
14 superintendent of schools, to review the financial condition of the city,
15 revenue and expenditure forecasts and other relevant information prepared
16 by the mayor in order to develop a coordinated budget.

17

18 SECTION 6-3: SUBMISSION OF OPERATING BUDGET; BUDGET MESSAGE

19 At least 45 days before the beginning of the fiscal year, the mayor shall
20 submit to the city council a proposed operating budget for all city agencies,
21 which shall include the school department, for the ensuing fiscal year with an
22 accompanying budget message and supporting documents. The budget
23 message submitted by the mayor shall explain the operating budget in fiscal
24 terms and in terms of work programs for all city agencies. It shall outline the
25 proposed fiscal policies of the city for the ensuing fiscal year, describe
26 important features of the proposed operating budget and include any major
27 variations from the current operating budget, fiscal policies, revenues and
28 expenditures together with reasons for these changes. The proposed
29 operating budget shall provide a complete fiscal plan of all city funds and

1 activities and shall be in the form the mayor deems desirable; provided,
2 however, that the budget shall identify the cost of compensation and the
3 cost of benefits for elected officials. The school budget, as adopted by the
4 school committee shall be submitted to the mayor at least 30 days before
5 the submission of the proposed operating budget to the city council. The
6 mayor shall notify the school committee of the date by which the proposed
7 budget of the school committee shall be submitted to the mayor. The mayor
8 and the superintendent of schools shall coordinate the dates and times of
9 the school committee's budget process under the General Laws.

10

11 SECTION 6-4: ACTION ON THE OPERATING BUDGET

12 (a) Public Hearing - The city council shall publish in at least 1 local
13 newspaper a notice of the proposed operating budget as submitted by the
14 mayor. The notice shall state: (i) the times and places where copies of the
15 entire proposed operating budget are available for inspection by the public;
16 and (ii) the date, time and place when a public hearing on the proposed
17 operating budget will be held by the city council, not less than 14 days after
18 publication of the notice.

19 (b) Adoption of the Budget - The city council shall adopt the proposed
20 operating budget, which may have amendments, within 45 days following
21 the date the proposed budget is filed with the city clerk. In amending the
22 proposed operating budget, the city council may delete or decrease amounts
23 except expenditures required by law; provided, however, that except on the
24 recommendation of the mayor, the city council shall not increase any item in
25 or the total of the proposed operating budget, unless otherwise authorized
26 by the General Laws. If the city council fails to take action on an item in the
27 proposed operating budget within 45 days after its receipt, that amount
28 shall, without any action by the city council, become a part of the
29 appropriations for the year and be available for the purposes specified.

1 (c) Availability of the Operating Budget – In addition to any other posting
2 requirements under law, immediately after the submission of the proposed
3 budget to the city council, the mayor shall cause the entire budget document
4 to be posted on the city's website. Said proposed budget document shall
5 remain posted during the city council review process contained in this article.
6 After the enactment of the budget, it shall be posted on the city's website
7 and shall remain there throughout the fiscal year for which it is in effect.
8 Said budget document shall reflect any amendments made by the city
9 council and approved by the mayor and shall indicate that it is the final
10 budget of the city.

11

12 SECTION 6-5: CAPITAL IMPROVEMENT PROGRAM

13 (a) Submission - The mayor shall submit a capital improvement program to
14 the city council at least 120 days before the start of each fiscal year. The
15 capital improvement program shall include:

16 (1) a general summary of its contents;

17 (2) a list of all capital improvements proposed to be undertaken during the
18 next 5 years, with supporting information as to the need for each capital
19 improvement;

20 (3) cost estimates, methods of financing and recommended time schedules
21 for each improvement; and

22 (4) the estimated annual cost of operating and maintaining each facility and
23 piece of major equipment involved.

24 This information shall be annually revised by the mayor with regard to the
25 capital improvements still pending or in the process of being acquired,
26 improved or constructed.

27 (b) Public Hearing - The city council shall publish in at least 1 newspaper of
28 general circulation in the city a notice stating: (i) the times and places where
29 entire copies of the capital improvements program are available for

1 inspection by the public; and, (ii) the date, time and place of a public
2 hearing on the plan to be held by the city council not less than 14 days after
3 publication of the notice.

4 (c) Adoption - At any time after the public hearing but before the last day of
5 the last month of the current fiscal year, the city council shall by resolution
6 adopt the capital improvements program, which may be amended, provided
7 that each amendment shall be voted on separately and that an increase in
8 the capital improvements program as submitted shall clearly identify the
9 method of financing to accomplish the proposed increase.

10

11 SECTION 6-6: INDEPENDENT AUDIT

12 The city council shall annually provide for an outside audit of the books and
13 accounts of the city to be conducted by a certified public accountant or a
14 firm of certified public accountants, which has no personal interest, direct or
15 indirect, in the fiscal affairs of the city or any of its officers. The mayor shall
16 annually provide to the city council a sum of money sufficient to satisfy the
17 estimated cost of conducting the audit as presented to the mayor, in writing,
18 by the city council. The award of a contract to audit shall be made by the
19 city council on or before September 15 of each year. The report of the audit
20 shall be filed in final form with the city council not later than March 1 in the
21 year following its award. At least every 5 years, the city council shall conduct
22 a competitive procurement process to retain these auditing services.

23

24 SECTION 6-7: EXPENDITURES IN EXCESS OF APPROPRIATIONS

25 Except as otherwise provided by law, no official of the city of Gardner shall
26 knowingly or intentionally expend in a fiscal year sums in excess of the
27 appropriations, awards, grants or gifts duly made in accordance with law or
28 involve the city in any contract for the future payment of money in excess of
29 such appropriations, awards, grants or gifts. It is the intention of this section

1 that section 31 of chapter 44 of the General Laws shall be strictly enforced.
2 Any official who violates this section shall be personally liable to the city for
3 any amounts so expended to the extent that the city does not recover these
4 amounts from the person to whom the sums were paid.

5

6 ARTICLE 7

7 ELECTIONS

8

9 SECTION 7-1: PRELIMINARY ELECTIONS

10 A preliminary election to nominate candidates for mayor, councilor-at-large,
11 ward city councilor, and school committee members shall be held on the
12 third Tuesday in September in each odd-numbered year in which the
13 candidates are to be elected, but the city clerk may, with the approval of the
14 city council, reschedule the preliminary election to the fourth Tuesday in
15 September to avoid a conflict with any civil or religious holiday. Whenever a
16 special election to fill a vacancy is to be held, a preliminary election shall be
17 conducted, if necessary, 28 days before the date established for the special
18 election; provided, however, that a preliminary election to fill a vacancy for
19 ward councilor shall be held only in the affected ward.

20

21 SECTION 7-2: PRELIMINARY ELECTION PROCEDURES

22 (a) Signature Requirements - The number of signatures of voters required to
23 place the name of a candidate on the official ballot to be used at a
24 preliminary election shall be as follows: for the office of mayor, not less than
25 200 certified signatures; for councilor at-large or school committee member,
26 not less than 100 certified signatures; for the office of ward city councilor,
27 not less than 75 certified signatures. Signatures of voters shall be made on a
28 form prescribed by the registrars of voters and shall be made available not
29 earlier than April 2 in each preliminary election year and those forms shall

1 be submitted to the registrars of voters for certification of the names on or
2 before the fourteenth day preceding the date fixed for submission to the city
3 clerk. The forms shall be submitted to the city clerk on or before the close of
4 business on the forty-fifth day prior to the declared date of the preliminary
5 election. An individual may appear on the ballot for only 1 office at any
6 preliminary, regular or special city election.

7 (b) Ballot Position - The order in which names of candidates for each office
8 appear on the ballot shall be determined by a drawing, by lot, conducted by
9 the city clerk at least 40 days before the preliminary election. The drawing
10 shall be open to the public.

11 (c) Determination of Candidates - The 2 people who receive the highest
12 number of votes for nomination for an office at the preliminary election shall,
13 except as provided by subsection (d), be the sole candidates for that office
14 whose names shall be printed on the official ballot to be used at the regular
15 or special city election at which the office is to be voted upon and no
16 acceptance of a nomination shall be necessary to its validity. If 2 or more
17 persons are to be elected to the same office at the regular or special city
18 election, the several persons equal in number to twice the number to be
19 elected, receiving at such preliminary election the highest number of votes
20 for nomination for that office shall, except as provided by subsection (d), be
21 the sole candidates for that office whose names shall be printed on the
22 official ballot. If the preliminary election results in a tie vote among
23 candidates for nomination receiving the lowest number of votes which would
24 entitle a person receiving the same to have that person's name printed on
25 the official ballot for the election, all candidates participating in the tie vote
26 shall have their names printed on the official ballots, although in
27 consequence thereof there shall be printed on the ballots the names of
28 candidates exceeding twice the number to be elected.

1 (d) Condition Making Preliminary Unnecessary - If at the expiration of the
2 time for filing statements of candidates for offices to be voted for at any
3 preliminary election, not more than twice as many such statements have
4 been filed with the city clerk for an office as are to be elected to such office,
5 the candidates whose statements have thus been filed shall be deemed to
6 have been nominated to the office and those candidates shall be voted on
7 for such office at the succeeding regular or special city election and the city
8 clerk shall not print those names on the ballot to be used at the preliminary
9 election and no other nomination to the office shall be made. If in
10 consequence it shall appear that no names are to be printed upon the official
11 ballot to be used at a preliminary election in the city, no preliminary election
12 shall be held.

13

14 SECTION 7-3 REGULAR CITY ELECTION

15 The regular city election shall be held on the first Tuesday following the first
16 Monday in November in each odd-numbered year.

17

18 SECTION 7-4: BALLOT POSITION, REGULAR CITY ELECTION

19 The order in which names of candidates for each office appear on the ballot
20 shall be determined by a drawing, by lot, conducted by the city clerk not
21 later than 7 days after the certification of the preliminary election results. In
22 the event that there is no preliminary election in advance of the regular city
23 election, the drawing shall be conducted on the fourth Tuesday in September
24 prior to the regular city election. In the event that there is no preliminary
25 election in advance of a special city election, the drawing shall be conducted
26 on the sixth Tuesday prior to the special city election. The drawing shall be
27 open to the public.

28

29

1 SECTION 7-5: NON-PARTISAN ELECTIONS

2 All elections for city offices shall be non-partisan and election ballots shall be
3 printed without any party mark, emblem or other political designation.

4

5 SECTION 7-6: WARDS

6 The territory of the city shall be divided into 5 wards by the city clerk to
7 consist of nearly an equal number of inhabitants as it is possible to achieve
8 based on compact and contiguous territory, bounded as far as possible by
9 the center line of known streets or ways or by other well-defined limits. Each
10 ward shall be composed of voting precincts established under the General
11 Laws. The city council shall review these wards to ensure uniformity in the
12 number of inhabitants at least once every 10 years.

13

14 SECTION 7-7: APPLICATION OF STATE GENERAL LAWS

15 Except as otherwise expressly provided in this charter and authorized by
16 law, all city elections shall be governed by the General Laws relating to the
17 right to vote, the registration of voters, the nomination of candidates, voting
18 places, the conduct of preliminary, regular and special city elections, the
19 submission of charters, charter amendments and other propositions to the
20 voters, the counting of votes, the recounting of votes and the determination
21 of results.

22

23 ARTICLE 8

24 CITIZEN PARTICIPATION MECHANISMS

25

26 SECTION 8-1: CITIZEN INITIATIVE MEASURES

27 (a) Commencement - Initiative procedures shall be started by the filing of a
28 proposed initiative petition with the city clerk or the secretary of the school
29 committee. The petition shall be addressed to the city council or to the

1 school committee, shall contain a request for the passage of a particular
2 measure which shall be set forth in full in the petition and shall be signed by
3 at least 250 voters. At least 25 signatures must be certified from each ward.
4 The petition shall be accompanied by an affidavit signed by 10 voters and
5 containing their residential address stating those voters will constitute the
6 petitioners committee and be responsible for circulating the petition and
7 filing it in proper form.

8 (b) Referral to City Solicitor - The city clerk or the secretary of the school
9 committee shall, immediately following receipt of a proposed petition, deliver
10 a copy of the petition to the city solicitor. The city solicitor shall, within 15
11 days following receipt of a copy of the petition, in writing, advise the city
12 council or the school committee and the city clerk whether the measure as
13 proposed may lawfully be proposed by the initiative process and whether, in
14 its present form, it may lawfully be adopted by the city council or the school
15 committee. If the opinion of the city solicitor is that the measure is not in
16 proper form, the reply shall state the reasons for this opinion, in full. A copy
17 of the opinion of the city solicitor shall be mailed to the members of the
18 petitioners committee.

19 (c) Submission to City Clerk - If the city solicitor determines that the petition
20 is in a proper form, the city clerk shall provide blank forms for the use of
21 subsequent signers and shall print at the top of each blank form a fair,
22 concise summary of the proposed measure, as determined by the city
23 solicitor, together with the names and addresses of the first 10 voters who
24 signed the originating petition. The city clerk shall notify the first 10 voters
25 that the blank forms are issued. Within 30 days following the date of the
26 notice, the petition shall be returned and filed with the city clerk signed by at
27 least 10 per cent of the total number of registered voters as of the date of
28 the most recent regular city election. Signatures to an initiative petition need
29 not all be on 1 paper, but all papers pertaining to any 1 measure shall be

1 fastened together and shall be filed as a single instrument, with the
2 endorsement on it of the name and address of the person designated as
3 filing the papers. With each signature on the petition there shall also appear
4 the street and number of the residence of each signer. Within 10 days
5 following the filing of the petition, the registrars of voters shall ascertain the
6 number of voters that signed the petition and the percentage that number is
7 of the total number of voters as of the date of the most recent regular city
8 election. The registrars of voters shall attach to the petition a certificate
9 showing the results of its examination and shall return the petition to the
10 city clerk or the secretary of the school committee, depending on how the
11 petition is addressed. A copy of the registrars of voters' certificate shall also
12 be mailed to the members of the petitioners committee.

13 (d) Action on Petitions - Within 30 days following the date a petition has
14 been returned to the city clerk or the secretary of the school committee and
15 after publication under subsection (f), the city council or the school
16 committee shall act with respect to each initiative petition by passing it
17 without change, by passing a measure which is stated to be in lieu of the
18 initiative measure or by rejecting it. The passage of a measure which is in
19 lieu of an initiative measure shall be deemed to be a rejection of the
20 initiative measure. If the city council or the school committee fails to act
21 within 30 days following the date the measure is returned to it, the measure
22 shall be deemed to have been rejected on the thirtieth day. If an initiative
23 measure is rejected, the city clerk or the secretary of the school committee
24 shall promptly give notice of that fact to the petitioners committee by
25 certified mail.

26 (e) Supplementary Petitions - Within 60 days following the date an initiative
27 petition has been rejected, a supplemental initiative petition may be filed
28 with the city clerk or the secretary of the school committee, but only by
29 persons constituting the original petitioners committee. The supplemental

1 initiative petition shall be signed by a number of additional voters equal to at
2 least 5 per cent of the total number of registered voters as of the date of the
3 most recent regular city election. The signatures on the initial petition filed
4 under subsection (c) and the signatures on the supplemental petition filed
5 under this subsection, taken together, shall contain the signatures of at least
6 15 per cent of the total number of registered voters as of the date of the
7 most recent regular city election. If the number of signatures to this
8 supplemental petition is found to be sufficient by the city clerk, the city
9 council shall call a special election to be held on a date not less than 35 nor
10 more than 90 days following the date of the certificate of the city clerk that a
11 sufficient number of registered voters have signed the supplemental
12 initiative petition and shall submit the proposed measure, without alteration,
13 to the voters for determination, but if a city election is to be held within 120
14 days following the date of the certificate, the city council may omit calling
15 the special election and cause the question to appear on the election ballot
16 at the approaching election for determination by the voters.

17 (f) Publication - The full text of an initiative measure which is submitted to
18 the voters shall be published in at least 1 local newspaper not less than 7
19 nor more than 14 days preceding the date of the election at which the
20 question is to be voted upon. Additional copies of the full text shall be
21 available for distribution to the public in the office of the city clerk.

22 (g) Form of Question - The ballots used when voting on a measure proposed
23 by the voters under this section shall contain a question in substantially the
24 following form:

25 Shall the following measure which was proposed by an initiative petition take
26 effect?

27 (Here insert the fair, concise summary of the proposed measure, as
28 determined by the city solicitor as referenced in subsection (c)).

29 o YES o NO

1 (h) Time of Taking Effect – Subject to section 9-4, if a majority of the votes
2 cast on the question is in the affirmative, the measure shall be deemed to be
3 effective immediately, unless a later date is specified in the measure.
4

5 SECTION 8-2: CITIZEN REFERENDUM PROCEDURES

6 (a) Petition, Effect on Final Vote - If, within 21 days following the date on
7 which the city council or the school committee has voted finally to approve
8 any measure, a petition signed by a number of voters equal to at least 15
9 per cent of the total number of voters as of the date of the most recent
10 regular city election and addressed to the city council or to the school
11 committee, protesting against the measure or any part of it is filed with the
12 secretary of the school committee or city clerk, the effective date of that
13 measure shall be temporarily suspended. The school committee or the city
14 council shall immediately reconsider its vote on the measure or part of it
15 and, if the measure is not rescinded, the city council shall provide for the
16 submission of the question for a determination by the voters either at a
17 special election, which it may call at its convenience, within such time as
18 may be requested by the school committee or at the next regular city
19 election; provided, however, that pending this submission and
20 determination, the effect of the measure shall continue to be suspended.

21 (b) Certain Initiative Provisions to Apply - The petition described in this
22 section shall be termed a referendum petition and section 9-1, as the section
23 relates to the filing and certification of signatures, shall apply to such
24 referendum petitions, except that the words "measure or part thereof
25 protested against" shall be deemed to replace the word "measure" and the
26 word "referendum" shall be deemed to replace the word "initiative". Subject
27 to section 9-5, the measure or part thereof protested against shall be null
28 and void unless a majority of those voting on the question shall vote in favor
29 of the measure or part thereof protested against at the election.

1 SECTION 8-3: INELIGIBLE MEASURES

2 None of the following shall be subject to the initiative or the referendum
3 procedures:

4 (1) proceedings relating to the internal organization or operation of the city
5 council or of the school committee;

6 (2) an emergency measure adopted under the charter;

7 (3) the city budget or the school committee budget as a whole;

8 (4) any appropriation for the payment of the city's debt or debt service;

9 (5) an appropriation of funds to implement a collective bargaining
10 agreement;

11 (6) proceedings relating to the appointment, removal, discharge,
12 employment, promotion, transfer, demotion or other personnel action;

13 (7) any proceedings repealing or rescinding a measure or part of it which is
14 protested by referendum procedures;

15 (8) any proceedings providing for the submission or referral to the voters at
16 an election; and

17 (9) resolutions and other votes constituting ordinary, routine matters not
18 suitable as the subject of a referendum petition.

19

20 SECTION 8-4 RECALL

21 (a) Application - Any holder of an elected office in the city, with more than 6
22 months remaining in the term of office for which the officer was elected,
23 may be recalled therefrom by the voters of the city in the manner provided
24 in this section. No recall petition shall be filed against an officer within 6
25 months after taking office.

26 (b) Recall Petition - A recall petition may be initiated by the filing of an
27 affidavit containing the name of the officer sought to be recalled and a
28 statement of the grounds for recall, provided that the affidavit is signed by
29 at least 500 voters for the office of mayor or councilor-at-large and at least

1 300 voters for any other elected official. The city clerk shall thereupon
2 deliver to those voters making the affidavit, copies of petition blanks
3 demanding such recall, copies of which printed forms the city clerk shall
4 keep available. The blanks shall be issued by the city clerk, with signature
5 and official seal attached thereto. The blanks shall be dated, shall be
6 addressed to the city council and shall contain the names of all the persons
7 to whom the blanks are issued, the number of blanks so issued, the name of
8 the person whose recall is sought, the office from which removal is sought
9 and the grounds of recall as stated in the affidavit. A copy of the petition
10 shall be entered in a record book to be kept in the office of the city clerk.
11 Said recall petition shall be returned and filed with the city clerk within 28
12 days after the filing of the affidavit, and shall have been signed by at least
13 20 percent of the voters of the city for any officer elected at large and signed
14 by at least 20 percent of the voters of the ward for an officer elected by
15 ward. The city clerk shall submit the petition to the registrars of voters and
16 the registrars shall, within 5 days, certify thereon the number of signatures
17 which are names of voters.

18 (c) Recall Election - If the petition shall be found and certified by the city
19 clerk to be sufficient, the city clerk shall submit the same with such
20 certificate to the city council within 5 days, and the city council shall give
21 written notice of the receipt of the certificate to the officer sought to be
22 recalled and shall, if the officer does not resign within 5 days thereafter,
23 order an election to be held on a date fixed by the city council not less than
24 64 days and not more than 90 days after the date of the city clerk's
25 certificate that a sufficient petition has been filed; provided, however, that if
26 any other city election is to occur within 120 days after the date of the
27 certificate, the city council shall postpone the holding of the recall election to
28 the date of such other election. If a vacancy occurs in said office after a

1 recall election has been ordered, the election shall not proceed as provided
2 in this section.

3 (d) Office Holder - The incumbent shall continue to perform the duties of the
4 office until the recall election. If said incumbent is not recalled, the
5 incumbent shall continue in office for the remainder of the unexpired term
6 subject to recall as provided in (f) below. If recalled, the officer shall be
7 deemed removed and the office vacant. The vacancy created thereby shall
8 be filled under articles 2, 3, and 4 of this charter for filling vacancies in such
9 office. A person chosen to fill the vacancy caused by a recall shall hold office
10 until the next regular city election. Should the person be a candidate in the
11 subsequent election, that person will not be allowed to have "candidate for
12 re-election" appear on the ballot at such election.

13 (e) Ballot Proposition - The form of the question to be voted upon shall be
14 substantially as follows: "Shall [here insert the name and title of the elective
15 officer whose recall is sought] be recalled?" Yes No
16 If a majority of the votes cast upon the question of recall is in the
17 affirmative, such elected officer shall be recalled.

18 (f) Repeat of Recall - In the case of an officer subjected to a recall election
19 and not recalled thereby, no recall petition shall be filed against such officer
20 until at least 270 days after the election at which the officer's recall was
21 submitted to the voters of the city.

22 (g) Office Holder Recalled - No person who has been recalled from an office
23 or who has resigned from office while recall proceedings were pending
24 against such person, shall be appointed to any city office within 2 years after
25 such recall or such resignation.

26

27 SECTION 8-5: REQUIRED VOTER PARTICIPATION

28 For any measure to be effective under initiative procedure and for any
29 measure to be declared null and void under a referendum procedure and for

1 any recall election, at least 20 per cent of the voters as of the most recent
2 regular city election must vote at an election that includes on the ballot
3 submission to the voters of 1 or more initiative or referendum or recall
4 questions. For recall of a ward councilor, 20 per cent of the affected ward's
5 voters must vote.

6

7 SECTION 8-6: SUBMISSION OF OTHER MATTERS TO VOTERS

8 The city council may on its own motion and shall at the request of the school
9 committee, if a measure originates with that body and pertains to affairs
10 under its jurisdiction, submit to the voters at a regular city election for
11 adoption or rejection a measure in the same manner and with the same
12 force and effect as are provided for submission by initiative or referendum
13 petitions.

14

15 SECTION 8-7: CONFLICTING PROVISIONS

16 If 2 or more measures passed at the same election contain conflicting
17 provisions, only the 1 receiving the greatest number of affirmative votes
18 shall take effect.

19

20 ARTICLE 9

21 GENERAL PROVISIONS

22

23 SECTION 9-1: CHARTER CHANGES

24 This charter may be replaced, revised or amended in accordance with any
25 procedure made available under the state constitution or by the General
26 Laws.

27

28

29

1 SECTION 9-2: SPECIFIC PROVISION TO PREVAIL

2 To the extent that a specific provision of this charter conflicts with any
3 provision expressed in general terms, the specific provision of the charter
4 shall prevail.

5

6 SECTION 9-3: RULES AND REGULATIONS

7 A copy of all rules and regulations adopted by a city agency shall be placed
8 on file in the office of the city clerk not later than the effective date of the
9 rule or regulation and shall be available for review by any person who
10 requests such information at any reasonable time. Unless an emergency
11 exists, as determined by the mayor, no rule or regulation adopted by a city
12 agency shall become effective until at least 5 days following the date it is
13 filed.

14

15 SECTION 9-4: PERIODIC REVIEW OF ORDINANCES

16 Not later than July 1, at 5-year intervals, in each year ending in a 5 or in a
17 0, the mayor and city council shall provide for a review to be made of some
18 or all of the ordinances of the city to prepare a proposed revision or
19 recodification of them. This review shall be made by a special committee to
20 be established by ordinance. All members of the committee shall be voters
21 of the city. The special committee shall file its report with the city clerk at a
22 date specified by ordinance. The review of city ordinances shall be under the
23 supervision of the city solicitor.

24

25 SECTION 9-5: PERIODIC REVIEW OF CHARTER

26 Not later than July 1, at 10-year intervals, in each year ending in a 3, the
27 mayor and city council shall provide for a review to be made of the city
28 charter. This review shall be made by a special committee whose
29 composition and term shall be determined by ordinance, provided however,

1 that members of the committee shall be voters of the city but shall not hold
2 any elected or appointed office or position within the city. The special
3 committee shall file its report with the city clerk at a date specified by
4 ordinance. Copies of any recommendations shall be made available to the
5 public at a cost not to exceed the actual cost of the reproduction.

6

7 SECTION 9-6: UNIFORM PROCEDURES GOVERNING MULTIPLE-MEMBER
8 BODIES

9 (a) Officers – All appointed multiple-member bodies shall elect a chair, a
10 vice-chair and a secretary and any other officer it deems necessary.

11 (b) Meetings - All appointed multiple-member bodies of the city shall meet
12 regularly at the times and places that the multiple-member body, by the
13 body’s own rules, prescribe. Special meetings of any multiple-member body
14 shall be held at the call of the chair or by a majority of the members of the
15 body. Notice of the meeting shall be posted as required by law. Except as
16 may otherwise be authorized by law, all meetings of all multiple-member
17 bodies shall at all times be open to the public.

18 (c) Meeting Documents and Submissions - Each appointed multiple-member
19 body shall determine its own rules and order of business. Each multiple-
20 member body shall provide for the keeping of agendas, minutes and related
21 submissions of its proceedings. All such documents shall be a public record
22 and certified copies shall be placed on file in the office of the city clerk within
23 a reasonable period from the date of approval.

24 (d) Voting - If requested by a member, or as otherwise required, a vote of
25 an appointed multiple-member body shall be taken by a roll call vote and the
26 vote of each member shall be recorded in the minutes, but if the vote is
27 unanimous, only that fact need be recorded.

28 (e) Quorum - A majority of the members of an appointed multiple-member
29 body shall constitute a quorum. Unless some other provision is made by the

1 multiple-member body's own rules while a quorum is present, except on
2 procedural matters, a majority of the full membership of the body shall be
3 required to vote on any matter representing an exercise of the powers of the
4 multiple-member body. General Laws related to a vote to meet in "executive
5 session" shall always require a majority of members of the body.

6

7 SECTION 9-7: REFERENCES TO GENERAL LAWS

8 All references to General Laws contained in the charter refer to the General
9 Laws of the commonwealth and are intended to refer to and to include any
10 amendments or revisions to such chapters or sections or to the
11 corresponding chapters and sections of any rearrangement, revision or
12 recodification of such statutes enacted or adopted subsequent to the
13 adoption of this charter.

14

15 SECTION 9-8: COMPUTATION OF TIME

16 In computing time under this charter the day of the act or event after which
17 the designated period of time begins to run shall not be included. The last
18 day of the period shall be included, unless it is a Saturday, Sunday or legal
19 holiday, in which event the period shall be extended to the next day which is
20 not a Saturday, Sunday or legal holiday. When the period of time designated
21 is fewer than 7 days, intermediate Saturdays, Sundays and legal holidays
22 shall not be included, when the period is 7 days or more, Saturdays,
23 Sundays and legal holidays shall be included.

24

25 SECTION 9-9: OATHS OR AFFIRMATIONS FOR THE OFFICE OF MAYOR, CITY
26 COUNCIL, SCHOOL COMMITTEE, CITY CLERK

27 A mayor-elect, the city council members-elect, and the school committee
28 members-elect shall, on the first Monday in the January of each even-
29 numbered year, meet and take an oath or affirmation to the faithful

1 discharge of the duties of their office by the city clerk. If the first Monday in
2 January of such even-numbered years falls on a legal holiday, the oaths or
3 affirmations shall be taken on the following day. Upon receiving the oath or
4 affirmation, each official shall document the same by signing an oath or
5 affirmation that shall be kept in a bound book maintained by the city clerk.
6 In the case of the absence of the mayor-elect or any member-elect of the
7 city council or school committee on the day the oath is administered, the
8 oath or affirmation may at any time thereafter be administered to that
9 person by the city clerk, the assistant city clerk, a judge of a court of record
10 or by a justice of the peace. Modifications to this section may be prescribed
11 by ordinance.

12

13 SECTION 9-10: CERTIFICATE OF ELECTION OR APPOINTMENT

14 Every person who is elected or appointed to an office or as a member of a
15 multiple-member body shall receive a certificate of that election or
16 appointment from the city clerk. Except as otherwise provided by law, every
17 person who is elected or appointed to an office or as a member of a
18 multiple-member body, before performing any act under this election or
19 appointment, shall take and subscribe to an oath or affirmation to qualify to
20 enter upon the duties. A record of this oath or affirmation shall be kept by
21 the city clerk.

22

23 SECTION 9-11: LIMITATION ON OFFICE HOLDING

24 Unless otherwise allowed by law or this charter, no person shall
25 simultaneously hold more than 1 city office or position of employment. This
26 section may be waived by the mayor upon the appointment of a person to
27 an additional office or position of employment by filing a notice of the waiver
28 with an explanation and justification with the city clerk.

29

1 SECTION 9-12: FELONY CONVICTION

2 An elected official who has been convicted of a state or federal felony while
3 holding office shall be deemed to have vacated the office.

4
5 SECTION 9-13: ENFORCEMENT OF CHARTER PROVISIONS

6 It shall be the duty of the mayor to see that the charter is faithfully followed
7 and complied with by all city agencies and city employees. Whenever it
8 appears to the mayor that a city agency or city employee is failing to follow
9 this charter the mayor shall, in writing, cause notice to be given to that
10 agency or employee directing compliance with the charter. If it shall appear
11 to the city council that the mayor personally is not following the charter the
12 city council shall, by resolution, direct the attention of the mayor to those
13 areas in which it believes there is a failure to comply with the charter. The
14 procedures made available in chapter 231A of the General Laws may be
15 used to determine the rights, duties, status or other legal relations arising
16 under this charter, including any question of construction or validity which
17 may be involved in such determination.

18
19 ARTICLE 10

20 TRANSITIONAL PROVISIONS

21
22 SECTION 10-1: CONTINUATION OF EXISTING LAWS

23 All general or special laws, city ordinances and rules and regulations of or
24 pertaining to the city of Gardner, including special acts creating regional
25 entities and arrangements of which the city is a member, that are in force
26 when this charter takes effect, and not specifically or by implication repealed
27 by this charter, shall continue in full force and effect until amended or
28 repealed, rescinded by law or until they expire by their own limitation. In
29 any case in which this charter is found to be inconsistent with any general or

1 special law that would otherwise be applicable, this charter shall be deemed
2 to prevail. Every inconsistency between the prior law and this charter shall
3 be decided in favor of this charter.

4

5 SECTION 10-2: CONTINUATION OF GOVERNMENT AND ADMINISTRATION

6 Except as specifically provided for in this charter, all city agencies shall
7 continue to perform the duties of the agency until re-elected, reappointed or
8 until successors to the respective positions are duly appointed or elected or
9 until the duties have been transferred and assumed by another city agency.

10

11 SECTION 10-3: TRANSFER OF RECORDS AND PROPERTY

12 All records, property and equipment of a city agency, or part thereof, the
13 powers and duties of which are assigned in whole or in part to another city
14 agency, shall be transferred immediately to that agency.

15

16 SECTION 10-4: EFFECT ON OBLIGATIONS

17 All official bonds, recognizance, obligations, contracts and other instruments
18 entered into or executed by or to the city before the adoption of this charter
19 and all taxes, assessments, fines, penalties and forfeitures, incurred or
20 imposed, due or owing to the city, shall be enforced and collected and all
21 writs, prosecutions, actions and causes of action, except as otherwise
22 provided in this charter, shall continue without abatement and remain
23 unaffected by the charter. No legal act done by or in favor of the city shall
24 be rendered invalid by reason of the adoption of this charter.

25

26 SECTION XX. This charter shall take effect upon its ratification by the voters
27 and in accordance with the following schedule:

- 1 (1) All city officers and employees shall continue to perform the duties of the
2 office in the same manner and to the same extent as previously performed
3 prior to the ratification by the voters of this charter.
- 4 (2) The first election of officers under this charter shall be held on November
5 3, 2015, to elect a mayor for a 4-year term, members of the city council for
6 2-year terms, and 3 members of the school committee for 4-year terms. The
7 3 members of the school committee elected at the 2013 regular city election
8 shall continue to hold office for the remainder of the terms for which they
9 were elected. A preliminary election nominating candidates to be elected
10 shall be held on September 15, 2015, if necessary, under article 7 of the
11 charter.
- 12 (3) On January 4, 2016 the persons elected in November 2015 shall be
13 sworn to the faithful performance of their duties.
- 14 (4) Not later than 30 days following the date of the ratification of this charter
15 by the voters, the city clerk shall give to each member of the general court
16 who represents the city of Gardner or a portion thereof a copy of the vote
17 ratifying this charter.
- 18 (5) Immediately after the election at which this charter is adopted, the city
19 council shall appoint 4 persons to a committee to begin a review of the city
20 ordinances to prepare such revisions and amendments as may be needed or
21 necessary to bring the ordinances into conformity with the charter and to
22 fully implement the charter. The city clerk shall be the fifth member of that
23 committee. The committee shall submit a report, with recommendations,
24 within 1 year following its establishment and may submit interim reports
25 with recommendations at any time; and provided, further that the city
26 solicitor, or special counsel appointed for this express purpose, shall serve as
27 an advisor to the committee.
- 28 (6) Not later than September 30, 2015, the mayor shall promulgate a series
29 of administrative orders under article 5 of the charter.

1 (7) Until such time as modified under article 5 of the charter, chapter 511 of
2 the acts of 1991 relative to the terms of the license commissioners shall
3 remain in effect.

4 (8) Until such time as another level of compensation is established under the
5 charter, the initial compensation for the mayor, city councilors and school
6 committee members shall be that which is in effect on the date of the 2013
7 regular city election.

8 (9) The mayor and the city council in office at time this charter is adopted
9 and the mayor and successor city council elected under this charter, may
10 adopt measures that clarify, confirm or extend any of the transitional
11 provisions in order that the transition may be made in the most expeditious
12 manner possible; provided, that such authority shall not extend beyond 5
13 years from the date of voter approval of this act.

14

15 SECTION XX. The following question shall be placed on the ballot to be used
16 at a special city election to be held in the city of Gardner concurrently with
17 the biennial state election on November 4, 2014: Shall an act entitled "An
18 Act Revising the Charter for the City of Gardner" be accepted?

19 The city solicitor shall prepare the summary of the proposed special act
20 charter which shall appear on the ballot along with the question provided in
21 this section.

22 If a majority of votes cast in answer to the question is in the affirmative, the
23 city shall be taken to have accepted the charter of the city of Gardner, but
24 not otherwise.

25

26 SECTION XX. This act shall take effect upon its passage.